

Item SPR05-02 Response Form

Title: Appellate Procedure: Certificate of Interested Entities and Persons (adopt Cal. Rules of Court, rule 14.5 and amend rules 56–59)

- ☐ **Agree** with proposed changes
- ☐ **Agree** with proposed changes **only if modified**
- ☐ **Do not agree** with proposed changes

Comments: _____

Name: _____ Title: _____

Organization: _____

Address: _____

City, State, Zip: _____

Please **write** or **fax** or **respond using the Internet** to:

Address: Ms. Romunda Price,
Judicial Council, 455 Golden Gate Avenue,
San Francisco, CA 94102
Fax: (415) 865-7664 **Attention:** Romunda Price
Internet: www.courtinfo.ca.gov/invitationstocomment

DEADLINE FOR COMMENT: 5:00 p.m. Monday, June 20, 2005
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Your comments may be written on this *Response Form* or directly on the proposal or as a letter. If you are not commenting directly on this sheet please remember to attach it to your comments for identification purposes.

*Circulation for comment does not imply endorsement by the Judicial Council, the Rules and Projects Committee, or the Policy Coordination and Liaison Committee.
All comments will become part of the public record of the council's action..*

Invitation to Comment (SPR05-02)

Title	Appellate Procedure: Certificate of Interested Entities and Persons (adopt Cal. Rules of Court, rule 14.5 and amend rules 56–59)
Summary	This proposal would adopt new rule 14.5 and amend rules 56–59 to require parties in Court of Appeal proceedings to file a certificate identifying entities and persons who either have a financial interest in the subject matter of the controversy or in a party to the proceeding or have any other kind of interest that could be substantially affected by the outcome of the proceeding.
Source	Appellate Advisory Committee Justice Joyce L. Kennard, Chair
Staff	Heather Anderson, Committee Counsel, 415-865-7691, heather.anderson@jud.ca.gov
Discussion	<p>Last year, the Judicial Council circulated for public comment a proposal from the Appellate Advisory Committee for a new rule 14.5 that would have required parties in appeals in the Court of Appeal to attach to their principal brief a certificate identifying entities that had either an ownership interest in a party or a financial interest in the outcome of the appeal. While the comments received on that proposal last year were generally favorable, two suggestions were made for substantive changes to the proposal: (1) that the certificate requirement should apply to writ proceedings as well as to appeals; and (2) that the types of interests covered by the certificate requirement should be broadened to encompass both interests of individual persons and nonfinancial interests in a proceeding. This latter suggestion was intended to make the certificate requirements applicable in the Court of Appeal under this proposal the same as those applicable in the Supreme Court under its Internal Operating Practices and Procedures. To address these suggestions, the Appellate Advisory Committee substantially modified its previous proposal. Comments on this new, broader proposal are now being sought.</p> <p>The overall goal of this proposal is to provide Court of Appeal justices with additional information to help them identify matters in which they should disqualify themselves. Canon 3E(4) of the California Code of Judicial Ethics requires that appellate justices disqualify themselves in any proceeding if for any reason they believe their recusal would further the interest of justice, substantially doubt their capacity to be impartial, or think that the circumstances are such that a</p>

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reasonable person aware of the facts would doubt their ability to be impartial. Canon 3E(5)(d) further requires that appellate justices disqualify themselves whenever “[t]he appellate justice, or his or her spouse, or a minor child residing in the household, has a financial interest or is a fiduciary who has a financial interest in the proceeding, or is a director, advisor, or other active participant in the affairs of a party.” This canon generally defines “financial interest” as “ownership of more than a 1 percent legal or equitable interest in a party, or a legal or equitable interest in a party of a fair market value exceeding one thousand five hundred dollars.”

When an entity in which a justice has an interest or a person with whom the justice has a relationship is a named party or is the subject of a proceeding, a justice can easily determine whether to disqualify himself or herself. However, sometimes an entity’s or person’s involvement in a proceeding is not readily apparent from the names of the parties in an appeal or from the record or briefing in the appeal. This “hidden” involvement most commonly arises when a named party is actually owned by another entity of a different name and the justice has a financial interest in that other entity.

To help Court of Appeal justices identify these other “hidden” entities or persons who have an interest in the proceedings, the Appellate Advisory Committee proposes the adoption of new rule 14.5 and amendment of rules 56–59. New rule 14.5 would require that parties in appeals in the Court of Appeal file with their first paper in the Court of Appeal a certificate identifying entities and persons who have either a financial interest in the subject matter of the controversy or in a party to the proceeding or have any other kind of interest that could be substantially affected by the outcome of the proceeding. The proposed amendments to rules 56–59 would require that such a certificate also be filed with the petition and any responsive paper in writ proceedings. This requirement is similar to the California Supreme Court’s requirement that, on the granting of review, parties file a *Certification of Interested Entities or Persons* (see Internal Operating Practices and Procedures of the California Supreme Court, section IV. L.). Because the Supreme Court already has a similar requirement, new rule 14.5 would apply only in Court of Appeal proceedings.

Attachment

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Rule 14.5 of the California Rules of Court would be adopted and rules 56-59 would be amended, effective January 1, 2006, to read:

Rule 14.5. Certificate of interested entities or persons

(a) Purpose and intent

The purpose of this rule is to provide justices of the Courts of Appeal with additional information to help them determine whether to disqualify themselves from a proceeding. The California Code of Judicial Ethics sets forth the circumstances under which an appellate justice must disqualify himself or herself from a proceeding.

(b) Definitions

For purposes of this rule:

- (1) “Certificate” means a Certificate of Interested Entities or Persons signed by appellate counsel or an unrepresented party.
- (2) “Entity” means a corporation, a partnership, a firm, or any other association, but does not include a governmental entity or its agencies or a natural person.
- (3) A mutual or common investment fund’s ownership of securities or bonds issued by an entity does not constitute a financial interest in that entity.
- (4) A person or entity’s ownership of less than 10 percent of the stock of a publicly held corporation does not constitute a financial interest in that entity.
- (5) An interest that could be substantially affected by the outcome of the proceeding within the meaning of (d)(1)(B) does not arise solely because the entity or person is in the same industry or field of business as a party and because the case might establish a precedent that would affect that industry or field of business.

1 **(c) Serving and filing a certificate**

2
3 In any appeal in which an entity is a party, each party must serve and file a
4 certificate at the time the party files its first paper in the Court of Appeal.
5 Each party must also include a copy of the certificate in its principal brief.
6 The certificate must appear after the cover and before the tables.
7

8 **(d) Contents of certificate**

9
10 (1) The certificate must list any entity or person, other than the parties, that
11 the party knows to have either:

12
13 (A) A financial interest in the subject matter of the controversy or in a
14 party to the proceeding; or

15
16 (B) Any other kind of interest that could be substantially affected by
17 the outcome of the proceeding.

18
19 (2) If the party knows of no entity or person that must be listed under (1),
20 the party must so state in the certificate.
21

22 **(e) Supplemental information**

23
24 A party that learns of changed or additional information that must be
25 disclosed under (d) must promptly serve and file a supplemental certificate in
26 the reviewing court.
27

28
29 **Rule 56. Original proceedings**

30
31 **(a)–(b) *****

32
33 **(c) Contents of supporting documents**

34
35 (1) A petition that seeks review of a trial court ruling must be accompanied
36 by an adequate record, including copies of:

37
38 (A) The ruling from which the petition seeks relief;

39
40 (B) All documents and exhibits submitted to the trial court supporting
41 and opposing the petitioner’s position;
42

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- 1 (C) Any other documents or portions of documents submitted to the
2 trial court that are necessary for a complete understanding of the
3 case and the ruling under review; and
4
- 5 (D) A reporter's transcript of the oral proceedings that resulted in the
6 ruling under review.
7
- 8 (2) If a transcript under (1)(D) is unavailable, the record must include a
9 declaration by counsel:
10
- 11 (A) Explaining why the transcript is unavailable and fairly
12 summarizing the proceedings, including counsel's arguments and
13 any statement by the court supporting its ruling; or
14
- 15 (B) Stating that the transcript has been ordered, the date it was ordered,
16 and the date it is expected to be filed, which must be a date prior to
17 any action requested of the reviewing court other than issuance of
18 a temporary stay supported by other parts of the record.
19
- 20 (3) A declaration under (2) may omit a full summary of the proceedings if
21 part of the relief sought is an order to prepare a transcript for use by an
22 indigent criminal defendant in support of the petition and if the
23 declaration demonstrates the petitioner's need for and entitlement to the
24 transcript.
25
- 26 (4) In exigent circumstances, the petition may be filed without the
27 documents required by (1)(A)–(C) if counsel files a declaration that
28 explains the urgency and the circumstances making the documents
29 unavailable and fairly summarizes their substance.
30
- 31 (5) If the petitioner does not submit the required record or explanations or
32 does not present facts sufficient to excuse the failure to submit them, the
33 court may summarily deny a stay request, the petition, or both.
34

35 (d)–(h) ***
36

37 **(i) Certificate of interested entities or persons**
38

39 If any party to the proceeding is an entity as defined in rule 14.5(b)(2), each
40 party must file a Certificate of Interested Entities or Persons under rule 14.5.
41 The petitioner's certificate must be included in the petition. The respondent's
42 and real party in interest's certificates must be included in their preliminary

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1 opposition or, if no such opposition is filed, in their return, if any. The
2 certificate must appear after the cover and before the tables.

3 4 ~~(j)~~(j) **Attorney General's amicus curiae brief**

5
6 ***

7 8 ~~(j)~~(k) **Notice to trial court**

9
10 ***

11 12 ~~(k)~~(l) **Responsive pleading under Code of Civil Procedure section 418.10**

13
14 ***

15 ~~(l)~~(m) **Costs**

16
17 ***

18 19 **Rule 57. Review of Workers' Compensation Appeals Board cases**

20 21 (a)–(b) ***

22 23 (c) **Certificate of Interested Entities or Persons**

24
25 If any party to the proceeding is an entity as defined in rule 14.5(b)(2), each
26 party other than the board must file a Certificate of Interested Entities or
27 Persons under rule 14.5. The petitioner's certificate must be included in the
28 petition and the real party in interest's certificate must be included in the
29 answer. The certificate must appear after the cover and before the tables.
30

31 32 **Rule 58. Review of Public Utilities Commission cases**

33 34 (a)–(b) ***

35 36 (c) **Certificate of Interested Entities or Persons**

37
38 If any party to the proceeding is an entity as defined in rule 14.5(b)(2), each
39 party other than the commission must file a Certificate of Interested Entities
40 or Persons under rule 14.5. The petitioner's certificate must be included in
41 the petition and the real party in interest's certificate must be included in the
42 answer. The certificate must appear after the cover and before the tables.

**Rule 59. Review of Agricultural Labor Relations Board and Public
Employment Relations Board cases**

(a)–(c) ***

(d) Certificate of Interested Entities or Persons

If any party to the proceeding is an entity as defined in rule 14.5(b)(2), each party other than the board must file a Certificate of Interested Entities or Persons under rule 14.5. The petitioner’s certificate must be included in the petition and the real party in interest’s certificate must be included in the answer. The certificate must appear after the cover and before the tables.